

46 Am. Jur. 2d Judges § 142

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Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

c. Judge's Actions or Rulings as Grounds for Disqualification

§ 142. Ex parte communications as grounds for judge's disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

The mere assertion that a judge initiated an ex parte communication with a party, without any averment whatsoever as to how that communication manifested an actual or apparent bias or prejudice against the party or attorney, is not sufficient to support a reasonable inference of a judge's prejudice or appearance of prejudice against the party or his or her attorney.¹ Ex parte communications with a party pertaining to housekeeping items not related to the merits of the case do not demonstrate prejudice. The fact that a judge meets with a party to discuss her complaints about delay in scheduling a hearing does not show a prejudicial state of mind where the judge does not discuss the merits of the case.² Similarly, a judge does not engage in improper ex parte communication where he or she consults a colleague on the correct procedure for handling a technical matter,³ or where the conversation simply corrects a clerical error.⁴

The canons or rules of many states provide that a judge should neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge may, however, obtain the advice of a disinterested expert on the law applicable to a proceeding before him or her if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.⁵ On the other hand, a judge's delegation of the drafting of proposed orders to one party through ex parte contacts could create the appearance of impropriety such that disqualification would be warranted.⁶

CUMULATIVE SUPPLEMENT

Cases:

Even if defendant did not invite sentencing judge's comments, at sentencing for child pornography offenses, about defendant's purported addiction to child pornography and the need for and possible benefit of treatment, judge's remark about defendant having an addiction that was likely to cause future crimes was not error; risk of future crimes seemed to be where defendant's addiction argument pointed, and judge was required by statute to consider any need for correctional treatment. 18 U.S.C.A. § 3553(a)(2)(D). *United States v. Grisanti*, 943 F.3d 1044 (7th Cir. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 *S.S. v. Wakefield*, 764 P.2d 70 (Colo. 1988).
The trial judge presiding over a father's motion for relief from judgment that adopted an amended parenting plan was not required to disqualify himself on the basis of a lack of impartiality, absent any showing that the judge improperly discussed facts not presented by either party, or that he had any improper ex parte communications with any party or their attorneys. *Cox v. Cox*, 2015 MT 78N, 378 Mont. 541, 348 P.3d 673 (2015).
However, a judge appropriately disqualified himself from presiding in child-support enforcement proceedings when he received an ex parte telephone call from a magistrate judge calling on behalf of his stepson, a party to such proceedings; the judge's impartiality might reasonably be questioned after the private conversation initiated by the magistrate judge. *In re Naranjo*, 2013-NMSC-026, 303 P.3d 849 (N.M. 2013).
- 2 *Parrillo v. Parrillo*, 495 A.2d 683 (R.I. 1985).
A sentencing judge was not required to recuse himself after engaging in ex parte communication with deputy prosecuting attorneys; the judge asked the deputy prosecutors to approve a scheduling order and deliver it to defense counsel for signature, the judge's communication did not reveal or imply bias, and the communication did not discuss substantive issues. *State v. Davis*, 175 Wash. 2d 287, 290 P.3d 43 (2012).
- 3 *Pioneer Hotel, Inc. v. N.L.R.B.*, 182 F.3d 939 (D.C. Cir. 1999).
- 4 *Hodges v. State*, 885 So. 2d 338 (Fla. 2004).
- 5 *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180 (1984); *State v. Fullwood*, 194 Conn. 573, 484 A.2d 435 (1984); *Stivers v. Knox County Dept. of Public Welfare*, 482 N.E.2d 748 (Ind. Ct. App. 1985).
- 6 *In re Disqualification of Spitler*, 142 Ohio St. 3d 76, 2014-Ohio-5875, 28 N.E.3d 67 (2014).

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